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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/574,011	08/01/2006	Werner Steprath	127536	4346

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OLIFF & BERRIDGE, PLC
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ALEXANDRIA, VA 22320-4850

EXAMINER

JOYCE, WILLIAM C

ART UNIT	PAPER NUMBER
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3656

NOTIFICATION DATE	DELIVERY MODE
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08/20/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/574,011

Applicant(s)

STEPRATH ET AL.

Examiner

William C. Joyce

Art Unit

3656

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 19 July 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/William C. Joyce/
Primary Examiner, Art Unit 3656

Continuation of 11. does NOT place the application in condition for allowance because:

Applicant argues the Olmstead reference teaches a lever for a transmission having very restrictive movement paths. This argument is not persuasive because the claims do not preclude a transmission lever device having a particular movement path.

Applicant argues that Olmstead transmission demands a significantly different way of supporting the lever as compared to the claimed subject matter. It is acknowledged that the claimed lever device is supported in a housing in a slightly different manner, wherein Olmstead does not teach the bearing section including a cylinder section with a convexly curved external cylinder surface which is guided in a correspondingly designed concavely curved internal cylinder surface. However, the prior art to Rosenbaum teaches the claimed joint structure, wherein the joint is formed with a cylindrical convex bearing section which is guided in a corresponding concave internal cylindrical section. It would have been obvious to one of ordinary skill in the art to replace the joint of Olmstead with the joint of Rosenbaum having the claimed cylindrical sections.

Applicant argues the flat springs of Olmstead could not be used in combination with the joint of Rosenbaum. This argument is not persuasive because one in the art could provide springs to the joint structure of Rosenbaum for engaging the end surface (bottom surface in Fig. 1) of the bearing sections so as to bias the lever into a predetermined position. Alternatively, one in the art would also recognize the lever of Olmstead can be constructed without the spring members in an application where it is not necessary to bias the lever into a predetermined position. Accordingly, the teachings of Rosenbaum does not away from the joint structure of Olmstead.

Applicant argues the Olmstead and Rosenbaum references are nonanalogous art. It has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, both Olmstead and Rosenbaum are concerned with a joint structure between two relatively pivoting members. Further, the joint of Rosenbaum is pertinent because it teaches a joint member having predetermined pressure transmitting surfaces so as to provide smooth motion between two relatively pivoting components. Accordingly, the prior art references of Olmstead and Rosenbaum are analogous art both of which are concerned with a pivoting joint structure.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Applicant argues the prior art does not teach the claim limitation "A manually operated electric control device ... wherein the position of the control lever can be detected by a sensing technology for generating a control signal." This argument is not persuasive because the claims do not positively recite a sensor for generating a control signal, but define the lever "can be" detected by a sensing arrangement. It appears applicant's argument is not commensurate with the scope of the claims.

The claim preamble "electric control device" has been given limited patentable weight because the claim does not positively recite any electrical components. Further, it is understood the lever device of Olmstead can be used to operate a transmission in an electric car, and therefore can be considered an electric control device.

The combined teachings of Olmstead and Rosenbaum teach each and every feature defined by the claims. The claims fail to define over the prior art.